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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,675	10/15/2001	Robert F. Dierbeck	1453-00050	3491

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EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,675

Applicant(s)

DIERBECK, ROBERT F.

Examiner

Leonard R. Leo

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 and 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-26 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3743

DETAILED ACTION

This application is a Continuation of serial no. 09/356,188, abandoned.

Election/Restrictions

Applicant's election without traverse of the species of Figure 12-15 in Paper No. 6 is acknowledged.

Claims 4-7 and 27-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-23, 26 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Haberski (Figure 8, column 5, lines 63-66). Regarding claim 23, elements 26A in Figure 8 are read as the “housing.”

Claims 22-23, 26 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Berti (page 1, lines 23-27). Regarding claim 23, Figure 2 discloses a “housing.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill

Art Unit: 3743

in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berti or Haberski in view of MacPhee.

Berti or Haberski discloses all the claimed limitations except a housing with a partition wall.

MacPhee discloses a heat exchanger comprising a plurality of modules 12 disposed in a housing, the housing defined by a shell 1 with a bottom portion 37 and first fluid openings 2, 3 fluidly connected via partition wall 70, and a cap 51 with chambers 60, 61 in communication with second fluid openings in tubesheet 10 and closing the housing for the purpose of providing a fluid path for the first fluid.

Since Berti or Haberski and MacPhee are both from the same field of endeavor and/or analogous art, the purpose disclosed by MacPhee would have been recognized in the pertinent art of Berti or Haberski.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Berti or Haberski a housing with a partition wall for the purpose of providing a fluid path for the first fluid as recognized by MacPhee.

Regarding claim 9, the Examiner takes Official Notice of the equivalence of removable seals and permanent seals for their use in the heat exchanger art and the selection of any of these known equivalents to fluidly seal the heat exchanger would be within the level of ordinary skill in the art.

Regarding claims 10-12, element 51 of MacPhee is read as the "cap" with aligned bores and bolts extending there through.

Art Unit: 3743

Regarding claims 13-14, the Examiner takes Official Notice of the gaskets and sealants for their use in the heat exchanger art and the selection of any of these known structures to fluidly seal the heat exchanger would be within the level of ordinary skill in the art.

Regarding claims 16 and 20-21, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ any known heat exchanger material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.


In re Leshin, 125 USPQ 416

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648. Status of the application may also be obtained from the Internet: <http://pair.uspto.gov/cgi-bin/final/home.pl>

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO
PRIMARY EXAMINER
ART UNIT 3743

October 6, 2003